

AMENDED IN ASSEMBLY APRIL 28, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1059

Introduced by Assembly Member Lieber

February 20, 2003

An act to ~~add Section 1953.5 to~~ amend Section 1942.5 of the Civil Code, relating to landlord and tenant.

LEGISLATIVE COUNSEL'S DIGEST

AB 1059, as amended, Lieber. Landlord and tenant: ~~harassment~~ retaliatory acts.

Existing law provides that a lessor or the agent of a lessor is liable to a lessee for, among other things, punitive damages of not less than \$100 nor more than \$1,000 for specified retaliatory acts where the lessor or agent has been guilty of fraud, oppression, or malice with respect to that act.

This bill would increase the maximum punitive damages allowed from \$1,000 to \$2,000. The bill would also make other technical, nonsubstantive changes.

~~(1) Existing law regulates the terms and conditions of residential tenancies. Existing law restricts the times when, and the circumstances under which, a landlord may enter the dwelling of a tenant. Existing law provides that a landlord in a rent control jurisdiction who evicts a tenant based on a fraudulent intention to occupy the tenant's unit may be liable for treble damages, as specified.~~

~~This bill would prohibit a landlord from doing or failing to do a variety acts with the intent of vexing, annoying, harassing, or injuring another person with respect to property that is a person's principal~~

~~residence and that is subject to a rental housing agreement, as defined. The bill would include among these prohibited acts, failing to provide housing services, as specified, failing to perform repairs, failing to use diligence in completing repairs, abusing the landlord's right of access, abusing the tenant with offensive words, and influencing a tenant to vacate by fraud. The bill would provide for criminal and civil penalties for a violation of its provisions, including imprisonment or a fine of \$5,000, or both.~~

~~(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~ *no*. State-mandated local program: ~~yes~~ *no*.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 1953.5 is added to the Civil Code, to~~
 2 *SECTION 1. Section 1942.5 of the Civil Code is amended to*
 3 *read:*

4 1942.5. (a) If the lessor retaliates against the lessee because
 5 of the exercise by the lessee of his rights under this chapter or
 6 because of his complaint to an appropriate agency as to
 7 tenantability of a dwelling, and if the lessee of a dwelling is not in
 8 default as to the payment of his rent, the lessor may not recover
 9 possession of a dwelling in any action or proceeding, cause the
 10 lessee to quit involuntarily, increase the rent, or decrease any
 11 services within 180 days *of any of the following:*

12 (1) After the date upon which the lessee, in good faith, has
 13 given notice pursuant to Section 1942, or has made an oral
 14 complaint to the lessor regarding tenantability;~~or.~~

15 (2) After the date upon which the lessee, in good faith, has filed
 16 a written complaint, or an oral complaint which is registered or
 17 otherwise recorded in writing, with an appropriate agency, of
 18 which the lessor has notice, for the purpose of obtaining correction
 19 of a condition relating to tenantability;~~or.~~

1 (3) After the date of an inspection or issuance of a citation,
2 resulting from a complaint described in paragraph (2) of which the
3 lessor did not have notice; ~~or~~.

4 (4) After the filing of appropriate documents commencing a
5 judicial or arbitration proceeding involving the issue of
6 tenantability; ~~or~~.

7 (5) After entry of judgment or the signing of an arbitration
8 award, if any, when in the judicial proceeding or arbitration the
9 issue of tenantability is determined adversely to the lessor.

10 In each instance, the 180-day period shall run from the latest
11 applicable date referred to in paragraphs (1) to (5), inclusive.

12 (b) A lessee may not invoke ~~the provisions of~~ subdivision (a)
13 more than once in any 12-month period.

14 (c) It ~~shall be~~ is unlawful for a lessor to increase rent, decrease
15 services, cause a lessee to quit involuntarily, bring an action to
16 recover possession, or threaten to do any of ~~such~~ those acts, for the
17 purpose of retaliating against the lessee because he or she has
18 lawfully organized or participated in a lessees' association or an
19 organization advocating lessees' rights or has lawfully and
20 peaceably exercised any rights under the law. In an action brought
21 by or against the lessee pursuant to this subdivision, the lessee shall
22 bear the burden of producing evidence that the lessor's conduct
23 was, in fact, retaliatory.

24 (d) Nothing in this section shall be construed as limiting in any
25 way the exercise by the lessor of his rights under any lease or
26 agreement or any law pertaining to the hiring of property or his
27 right to do any of the acts described in subdivision (a) or (c) for any
28 lawful cause. Any waiver by a lessee of his rights under this section
29 ~~shall be~~ is void as contrary to public policy.

30 (e) Notwithstanding ~~the provisions of~~ subdivisions (a) to (d),
31 inclusive, a lessor may recover possession of a dwelling and do any
32 of the other acts described in subdivision (a) within the period or
33 periods prescribed therein, or within subdivision (c), if the notice
34 of termination, rent increase, or other act, and any pleading or
35 statement of issues in an arbitration, if any, states the ground upon
36 which the lessor, in good faith, seeks to recover possession,
37 increase rent, or do any of the other acts described in subdivision
38 (a) or (c). If such statement be controverted, the lessor shall
39 establish its truth at the trial or other hearing.

(f) Any lessor or agent of a lessor who violates this section shall be liable to the lessee in a civil action for all of the following:

(1) The actual damages sustained by the lessee.

(2) Punitive damages in an amount of not less than one hundred dollars (\$100) nor more than ~~one two~~ *two* thousand dollars (~~\$1,000~~) (\$2,000) for each retaliatory act where the lessor or agent has been guilty of fraud, oppression, or malice with respect to ~~such~~ *that* act.

(g) In any action brought for damages for retaliatory eviction, the court shall award reasonable attorney's fees to the prevailing party if either party requests attorney's fees upon the initiation of the action.

(h) The remedies provided by this section shall be in addition to any other remedies provided by statutory or decisional law.

~~read:~~

~~1953.5. (a) As used in this section:~~

~~(1) "Fraud" means intentional misrepresentation, deceit, or concealment of a material fact.~~

~~(2) "Housing services" means a benefit, privilege, or facility that is provided to the tenant in connection with the use or occupancy of a rental housing unit, including, but not limited to, hot and cold water, heat, electricity, gas, refrigeration, elevator service, window shades and screens, storage, kitchen, bath, and laundry facilities and privileges, janitor services, refuse removal, furnishings, telephone, parking, effective waterproofing and weather protection, and painting. Housing services include a proportionate share of services provided to common facilities of the building or area containing the rental housing unit.~~

~~(3) "Landlord" means an owner, lessor, or other person entitled to receive rent for the use and occupancy of a rental housing unit, or his or her agent, representative, or successor.~~

~~(4) "Malice" means an intent to vex, annoy, harass, or injure a person.~~

~~(5) "Rental housing agreement" means an agreement, oral, written, or implied, between a landlord and tenant for the use or occupancy of a rental housing unit and for housing services.~~

~~(6) "Rental housing unit" means a property or a portion of a property that is used as the principal place of residence by an individual, including a single-family home, roominghouse, apartment, mobilehome or mobilehome space, or trailer or trailer space.~~

1 ~~(7) “Tenant” means a tenant, subtenant, lessee, sublessee, or~~
2 ~~other person entitled under the terms of a rental housing agreement~~
3 ~~to the use or occupancy of a rental housing unit.~~

4 ~~(b) With respect to a rental housing unit subject to a rental~~
5 ~~housing agreement, a landlord may not do any of the following~~
6 ~~with malice:~~

7 ~~(1) Interrupt, terminate, or fail to provide housing services~~
8 ~~required by contract or by state, county, or local housing, health,~~
9 ~~or safety laws.~~

10 ~~(2) Fail to perform repairs and maintenance required by~~
11 ~~contract or by state, county, or local housing, health, or safety laws.~~

12 ~~(3) Fail to exercise due diligence in completing repairs and~~
13 ~~maintenance after they are undertaken.~~

14 ~~(4) Abuse the landlord’s right of access into a rental housing~~
15 ~~unit as specified in Section 1954.~~

16 ~~(5) Abuse a tenant with words that are offensive or inherently~~
17 ~~likely to provoke an immediate violent reaction.~~

18 ~~(6) Influence or attempt to influence a tenant, through fraud,~~
19 ~~intimidation, or coercion, to vacate a rental housing unit or to~~
20 ~~refrain from lawfully and peacefully exercising any of the tenant’s~~
21 ~~rights under the law.~~

22 ~~(7) Threaten the tenant by word or gesture with physical harm.~~

23 ~~(8) Terminate or attempt to terminate a tenancy, including~~
24 ~~service of a notice to quit or other eviction notice, or bring an~~
25 ~~action to recover possession of a rental housing unit, based upon~~
26 ~~facts that the landlord does not have reasonable cause to believe to~~
27 ~~be true or upon a legal theory which is untenable under the facts~~
28 ~~known to the landlord.~~

29 ~~(9) Interfere with a tenant’s right to the quiet use and enjoyment~~
30 ~~of a rental housing unit.~~

31 ~~(10) Refuse to acknowledge and provide written receipt of a~~
32 ~~tenant’s lawful rent payment.~~

33 ~~(11) Interfere with a tenant’s right to privacy.~~

34 ~~(e) This section may not be construed to prevent the lawful~~
35 ~~eviction of a tenant by appropriate legal means or apply to~~
36 ~~occupancies defined by subdivision (b) of Section 1940.~~

37 ~~(d) (1) A person who is convicted of violating this section shall~~
38 ~~be guilty of a misdemeanor and upon conviction shall be punished~~
39 ~~by a fine of not greater than five thousand dollars (\$5,000) or by~~

1 imprisonment in a county jail for not more than six months, or by
2 both that fine and imprisonment.

3 (2) A person who violates, or aids or incites another person to
4 violate, the provisions of this section is liable for each offense for
5 the actual damages suffered by an aggrieved party or for statutory
6 damages in the sum of five thousand dollars (\$5,000), whichever
7 is greater. That person or persons shall also be liable for attorney's
8 fees and costs as may be determined by the court. The court may
9 also award punitive damages to any plaintiff, in a proper case as
10 defined by Section 3294 of the Civil Code. The burden of proof for
11 purposes of punitive damages shall be clear and convincing
12 evidence.

13 (3) Any person, including any district attorney, county counsel,
14 or city attorney, may enforce the provisions of this section by a
15 civil action. The burden of proof shall be a preponderance of the
16 evidence. A violation of this section may be asserted as an
17 affirmative defense in an unlawful detainer action. A court of
18 competent jurisdiction may enjoin a person who commits an act,
19 proposes to commit an act, or engages in a pattern of practice, that
20 violates this section.

21 (4) The rights and remedies provided in this section are
22 nonexclusive, and are in addition to all those rights and remedies
23 that are otherwise available under any other provision of law.

24 SEC. 2. No reimbursement is required by this act pursuant to
25 Section 6 of Article XIII B of the California Constitution because
26 the only costs that may be incurred by a local agency or school
27 district will be incurred because this act creates a new crime or
28 infraction, eliminates a crime or infraction, or changes the penalty
29 for a crime or infraction, within the meaning of Section 17556 of
30 the Government Code, or changes the definition of a crime within
31 the meaning of Section 6 of Article XIII B of the California
32 Constitution.